Fitzroy Legal Service

Community driven justice.

Fitzroy Legal Service Submission to the Cultural Review of the Adult Custodial Corrections System (2021)

28 January 2022

We acknowledge that our offices are located on the lands of Wurundjeri People of the Kulin Nation whose sovereignty was never ceded. We pay our respects to their Elders past, present and emerging. We are grateful to our clients, colleagues, and community for trusting us with their stories and for granting us permission to use and share their experiences in this document.

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About Fitzroy Legal Service

Fitzroy Legal Service ('FLS') was established in 1972 and is one of the oldest community legal centres in Australia. In 2019 we merged with the Darebin Community Legal Centre and now operate from three offices across Fitzroy, Reservoir and the Neighbourhood Justice Centre in Collingwood. FLS provides criminal, family, family violence and generalist legal services to socially and economically disadvantaged clients with a particular focus on people stigmatised and criminalised due to poverty, homelessness, childhood abuse, family violence, trauma, drug use, psycho-social disability, contact with the criminal justice system and incarceration. Relevantly for this submission, FLS runs a Prison Advocacy Program, focusing on prison conditions and rights of people in prison. The program includes a state-wide Prison Advice Line providing information and advice to people in prison and their families.

About this submission

This submission was prepared by the Prison Advocacy Program, integrating recommendations from Fitzroy Legal Service's Criminal Justice Inquiry Submission. This submission does not attempt to be inclusive of all issues we see in our practice. An attempt to do so would overwhelm our limited capacity which must prioritise the legal needs of our clients. We also support and endorse the submissions of Human Rights Law Centre and Victorian Aboriginal Legal Service which address additional issues relevant to our clients.

This submission also includes quotes from interviews conducted with Women's Leadership Group, a group of women with experience of incarceration and/or criminalisation that were employed by Fitzroy Legal Service to undertake systemic advocacy work. Unfortunately, due to an inability to obtain ongoing funding, the Women's Leadership Group was discontinued at the end of 2021. It is highly regrettable that this is the endpoint of three years' of valuable work but it reflects the 'consultancy' basis in which many marginalised, targeted, and abandoned communities are engaged by the legal sector. We urge the Department of Justice to commit to a culture of long-term and ethical engagements with communities impacted by incarceration, with ongoing funding central to genuine empowerment and mutual beneficial developments.

Note on Case Studies

The case studies in this submission are drawn from the work of the Fitzroy Legal Service. All names and some identifying details have been changed

INCARCERATION IS INHERENTLY HARMFUL

Through our practice, we see firsthand how incarceration is inherently harmful. Our clients express how imprisonment serves to compound and entrench traumas, which reduces the likelihood of healthy reintegration and increases the risk of recidivism. It is the position of FLS that to prevent recidivism and improve community safety, governments should prioritise investment in addressing the root causes of offending. We stress that the Victorian Government must urgently prioritise law and policy that prevents imprisonment in the first place, ensuring people have access to community-based supports, housing, employment and healthcare. However, imprisonment is an existing sentencing option and a current reality for thousands of Victorians and their loved ones. When imprisonment occurs, people in prison must be treated consistently with human rights and provided the same standard of care as in the community.

Whitney from the Women's Leadership Group outlined the following recommendation:

> *"I think there needs to be a lot more training to staff to understand that a lot of women are coming from very poor socio-economic backgrounds, they've primarily been victims of abuse, whether it be domestic violence, child abuse, neglect, things like that"*

For further recommendations, we refer to *FLS Submission to Inquiry into Victoria's Criminal Justice System, Part 6 'How do we break the cycle? Addressing the drivers of Victoria's crisis of criminalisation and incarceration'*

CHANGING THE PUNITIVE, ADVERSARIAL, AND DISEMPOWERING CULTURE WITHIN PRISONS

The *Sentencing Act 1991* recognises imprisonment as is the heaviest sentence society undertakes, and only calls for incarceration if no other option is available to serve the purpose/s of the sentence.[1] The removal of someone's liberty is the punishment, and there is no reason, legally or otherwise, to penalise people beyond the sentence imposed by the Court. Despite this, we see in practice how the culture of Corrections Victoria ('Corrections'), which is centred on security and 'good order', often leads to further punitive treatment. People in prison are treated as criminals to be managed, rather than human beings with needs and wants who are members of families and communities. It is an expectation of our society, enshrined in the adoption of the Charter of Human Rights and Responsibilities,[2] that all peoples should be treated with human rights and dignity. To ensure people in prison have human rights, the Victorian Adult Custodial Corrections System must culturally shift from a security standpoint to accepting people in prison as 'people' and members of the Victorian community.

The structural nature of prisons in many ways necessitates punitive treatment. As outlined in the Special Report on Corrections tabled in Victorian Parliament by the Independent Broad-based Anti-corruption Commission (IBAC),[3] the power imbalances that exist between Correctional staff and 'prisoners', coupled with the closed/opaque nature of prisons, both enables and encourages poor treatment, degradation and a general misuse of authority. Women

[1] *Sentencing Act 1991* (Vic) s 5(4)
[2] *Charter of Human Rights and Responsibilities Act 2006* (Vic)
[3] Independent Broad-based Anti-Corruption Commission, *Special report on Corrections: IBAC Operations Rous, Caparra, Nisidia and Molara (*June 2021).

interviewed from the Women's Leadership Group described how prison staff used tactics of punishment, control and psychological violence:

> *"…these particular officers that I'm talking about… I feel like when you go into the prison system, they really want to remind you who you are, and you are somebody that's coming in and you are a number and you're no better than anyone else. And you know…you know you gotta bend and part, you're gonna get strip searched, you're gonna do this, your gonna do that. If you've walked in there with self-esteem and your head held high, for a woman, it comes crashing down…. they don't want women walking around with confidence. They want you to remember who you are, and you know-you'll do as your told, when you're told"- Cyndi*

> *"Treatment that I received off particular officers in there that, you know, they've got that power head on them and want to twist and fuck in people's brains"- Cyndi*

Considering this treatment occurs inside prisons, situations that further enable degrading treatment should be removed, and viable safeguards should be in place to prevent overreach of authority and subsequent mistreatment.

EXAMPLES

There are numerous punitive prison practices that constitute cruel and degrading treatment. To change Corrections culture, these practices should not be available for consideration, and should be abolished through legislation. We endorse the Human Rights Law Centre submission, 'Section 5: Ending cruel and degrading treatment behind bars' that outlines the torturous impacts of routine strip searching and solitary confinement. We also endorse the Victoria Aboriginal Legal Service (VALS) submissions on strip searching and solitary confinement. We add the following to reflect our client's experiences.

<u>Strip searching</u>

Through the Prison Advocacy Program, we know strip searching is a routine practice in Victorian prisons. The *Corrections Act* allows strip searches to occur if the prison management believes on reasonable grounds it is necessary for the 'security or good order' of the prison.[4] This has a widespread affect. Strip searching occurs at various occasions including before and after contact visits, before and after a person is placed in solitary confinement,[5] and before drug testing (which can be routine or targeted).[6]

There is no recent publicly available information about how many strip searches are conducted in Victorian prisons, but we are aware through our prison advocacy program that for some people searches are a very regular occurrence, particularly if they are in a maximum-security prison or if they have a history of injecting drugs.

A recent Victorian Supreme Court of Appeal case held that 'strip search procedure… is highly intrusive and limits the inherent dignity of the prisoner being searched.'[7] This is compounded by the fact that a significant proportion of men and women in prison have experienced sexual

[4] *Corrections Act 1986* (Vic) s 45(1)(b); *Corrections Regulations 2019* (Vic) reg 87.
[5] Described as 'an observation cell or management unit' in the Corrections Regulations.
[6] *Corrections Regulations 2019* (Vic) reg 87.
[7] *Thompson v Minogue* [2021] VSCA 358 (17 December 2021) [243]

assault and abuse in their childhood and adult lives. Subjecting anyone, and particularly people with histories of trauma and abuse, to strip searching is cruel, profoundly harmful and re-traumatising. Whitney of the Women's Leadership Group outlined the following:

"I had trauma, but it wasn't huge, this is my big, big bug-bear about the prison system. There's no consideration about the trauma that women are re-experiencing through strip searching, because it's a violation of your body, and that can bring up previous traumas that you've had"

We recommend the urgent legislative ban of routine strip searching and legislatively require that the least restrictive measures be used to detect drugs and other contraband.

Solitary confinement

Examples of reported reasons for solitary confinement from the Prison Advocacy Program include isolation for not taking medicines correctly; not responding to instructions from guards with 'respect; and mental health episodes. We see through our clients how solitary confinement is both a form of punishment and a tool of behaviour management. People with mental illness or cognitive impairment are often more difficult to 'manage' and therefore are more likely to end up in solitary confinement and experience more damaging effects. [8] Solitary confinement should not be an available management tool for Correctional staff. Its use reflects a punitive correctional culture that does not respect human rights.

Concerningly, people deemed at risk of self-harm or suicide are often placed in 'observation' or 'wet' cells. People are placed in alone in a glass box for observation, with no mental health supports, minimal provision of medication and food, are stripped of their clothing, provided a 'suicide-proof gown', all in the name of preventing self-harm. For someone experiencing acute psychological distress, these conditions are incredibly harmful. Intervention in these circumstances should be medical based, providing appropriate mental health supports, rather than heavy-handed, punitive measures that exacerbate the condition and further traumatise the prisoner. We are unsure of the extent to which 'wet' cells are used; however, our clients are often weary of informing us, even as their advocates and lawyers, of any mental health concerns for fear of being placed in solitary confinement.

Case Study: Laura

> *Laura had received distressing new about her prison sentence. She was upset but in her own words, 'not attempting to self-harm nor causing trouble to anyone else'. Nonetheless, she was placed in a 'wet' cell. She was made to undress, including her underwear, in front of 5 male guards. She was on her period. She was provided one pad to hold against herself. She was watched by guards. She felt 'humiliated' and like a 'piece of shit'. The mattress was blood stained, and blanket contained rat poo. She was cold. She had a migraine and was not provided Panadol. She vomited as a result. She received threats, 'if you don't do as you're told we're going to keep you in here'. After 24 hours she was released from the wet cell, and placed in supervision for a few days before being able to return to her cell.*

[8] See for example, Human Rights Watch, '"I Needed Help, Instead I was Punished": Abuse and Neglect of Prisoners with Disabilities in Australia' (2018) 40; Andreea Laschz and Monique Hurley, 'Why Practices that Could Amount to Torture or Cruel, Inhuman and Degrading Treatment Should Never Have Formed Part of the Public Health Response to the COVID-19 Pandemic in Prisons' (2021) 33(1) *Current Issues in Criminal Justice* 54, 56

Laura says about her experience:

'I don't know how anyone can justify what they did to me as appropriate in any stretch of the imagination. People treat their animals better than that.'

'If I was suicidal being treated like that is absolutely not going to help me. Stripping someone of their dignity is not going to prevent them from hurting themselves. You get to your absolute lowest point in that environment.'

'To be punished on top of being told I couldn't go home when I was expecting to. To be put in that box. I couldn't even process what had happened, I couldn't speak to my children. I felt like I was being punished for being upset; that they were using that against me.'

We recommend the urgent legislative ban of solitary confinement in all circumstances.

Degrading and inhumane COVID-19 Response

Despite the overwhelming evidence about the damage caused by solitary confinement, it remains a common practice in Victorian prisons, typically as part of 'managing' the behaviour of people in prison and more recently as part of the response to the COVID-19 pandemic. In Victoria, amendments to the Corrections Act in 2020 authorised a 14-day 'quarantine' period for all people entering prison.[9] We are also aware of heavy and regular reliance on prison-wide lockdowns as part of managing the risk of COVID-19. Lockdowns have a huge impact on people in prison and their families, generating enormous uncertainty for people detained and their loved ones. They also could amount to torture or cruel, inhuman, and degrading treatment.[10] We received several reports of prison-wide lock downs involving people remaining in their cells for nearly 24 hours a day, with less than half an hour of outside time. This may constitute 'prolonged solitary confinement' and be in breach of the *Victorian Charter of Human Rights and Responsibilities* and s 47 of the *Corrections Act*. In the most recent Omicron wave, lockdowns began on Christmas Day. People were kept to their cells and unable to communicate with friends or family on Christmas Day or the weeks following due to lockdowns. The prevention of visits is especially onerous.

Case study: James

James has been incarcerated since December 2019. His partner was pregnant at the time of his incarceration. His child was born soon after Coronavirus lockdowns were first implemented in Australia. Prison visits were stopped in March 2020. As a result, he has not been able to meet his child. Phone calls or zoom calls are not comparable, as internet or phone communication with a baby does not allow for any meaningful interaction. This has caused significant distress for our client, who feels he has been stripped of a relationship with his daughter which has caused damage to the young family's ability to continue connection.

[9] *Corrections Act 1986* (Vic) ss 112K, 112M.
[10] See also Andreea Laschz and Monique Hurley, 'Why Practices that Could Amount to Torture or Cruel, Inhuman and Degrading Treatment Should Never Have Formed Part of the Public Health Response to the COVID-19 Pandemic in Prisons' (2021) 33(1) *Current Issues in Criminal Justice* 54, 60.

Our colleagues at the Human Rights Law Centre and Victorian Aboriginal Legal Service have repeatedly requested access to the health advice that justifies the overwhelming reliance on protective quarantine and lockdowns (both of which can and do amount to solitary confinement) as the primary means to respond to the risk of COVID-19 in prisons. To date we are not aware of any information that justifies why these practices have been consistently preferred over less restrictive approaches, including surveillance testing of staff and concerted efforts to reduce the prison population. This practice seems particularly unjustified during the sustained periods when Victoria had no community transmission, and yet everyone incarcerated in prison was still subject to 14 days protective quarantine. During the Omicron wave, the community quarantine period was changed to 7 days for people who contracted the virus, but in prison, it remains at 14 days protective quarantine. This approach raises significant questions about whether the Victorian Government's management of the risk of COVID-19 in prisons falls foul of the Victorian Charter of Human Rights and Responsibilities, which requires that restrictions on human rights be proportionate and least restrictive.

It also begs the question: has the inherent/baseline severity of prison changed during COVID-19? When a Magistrate or Judge is sentencing a person to a term of imprisonment, they do so reflecting community understanding of what a prison sentence entails, with some automatic consideration of the level of hardship and rehabilitative opportunities. During COVID-19, most programs and client services have been cancelled. This impacts any rehabilitative intention in the prison sentence. As one person said on the Prison Advice Line:

> *'the difficulty of my sentence has dramatically increased. I feel like my years have become more difficult. I do not think the Judge knew he was sentencing me to this sort of prison sentence.'*

Corrections has adopted automatic Coronavirus 'Emergency Management Days (EMDs)'. Section 58E(1) of the Corrections Act 1986 and Regulation 100 of the Corrections Regulations 2019 provide the power to grant EMDs under certain circumstances and specify the number of days that can be approved. Corrections can reduce the length of a prison sentence or non-parole period '*on account of good behaviour while suffering disruption or deprivation'* by up to 4 days for each day of disruption or deprivation during an 'emergency' and up to 14 days in 'circumstances of an unforeseen or special nature.'

Current Corrections policy is that they will automatically (without receiving an application) consider one EMD for each day a person in prison suffers certain COVID-related disruptions (1:1 EMDs) to prisoners who are of "good behaviour". Under the current policy, COVID-related disruptions and deprivations include "restrictive regimes" (segregation in quarantine units) and "restricted out of cell time" (lockdowns). Corrections will not automatically consider EMDs for suspension of personal visits or prison programs and services because they say they are accessible via 'remote technology'. In our experience, this is often not the case. Many people that wish to communicate with people in prison do not have access to smart phones or technology for 'Zoom' calls; the ability to organise these calls are significantly limited; and there have been technological delays and issues. The unwillingness of Corrections to use their discretion to account for the difficulty and damage caused by suspension of visits and programs reflects a culture that refuses to understand or take account of these impacts.

Recommendations

- *legislate to require that managing COVID-19 in prisons be achieved through the least restrictive means, including surveillance testing of staff and reducing the number of people in prison*

- *urgently address staffing and other operational issues to ensure no one is subjected to solitary confinement for these reasons.*

- *Review the Emergency Management Day scheme to increase the number of days rewarded for compounding COVID-19 related disruptions c*

Inflexible program provision/and reduced rehabilitative options

Corrections are the provider of rehabilitative programs. Rehabilitative programs are supposed to prepare people for reintegration in the community and are often a pre-requisite to parole eligibility. In our experience, people frequently do not have access to recommended programs or Corrections are unwilling or unable to be flexible in how they are administered. For example, despite the unavailability of programs during COVID-19, Corrections have failed to provide alternatives routes to parole eligibility, such as completing an alternative program or a program in the community. This renders people stuck in an illogical bureaucratic loop: they are unable to complete a program and as a result, unable to successfully apply for parole.

Beyond COVID-19, Corrections often do not provide flexible delivery of programs. In our opinion, this is to the detriment of its rehabilitative aims, and often impacts the most vulnerable people in prison. For example, people with mental health concerns or privacy concerns might benefit from a slightly modified program that accounts for their circumstances or protect them from the risk of ill treatment from other people in prison. In the Supreme Court case *Webb v Secretary to the Department of Justice*,[11] it was ruled that the decision of Corrections not to respond to requests to amend their programs is a matter of policy, and except from judicial review. Given this ruling, it is crucial that Corrections adapt a flexible policy that enables people to complete rehabilitative programs in ways that benefit them. In our opinion, this is essential for building a rehabilitative culture and reducing recidivism.

Case Study: Chase

> *Chase suffers from significant mental health concerns. He does not feel safe completing a program in a group setting due to the nature of the offending and the impact on his mental health diagnoses. He is required to do the program to be eligible for parole. He has requested to complete the program in a one-on-one environment or do another course instead. Despite speaking several times to program managers, prison staff and the Ombudsman, Corrections are not willing to change their position on the type of course he must undertake and the nature of its administration. He is left with the options of completing the program and risking his health and safety, or not doing the program and being denied parole.*

Gatekeeping healthcare; Inadequate healthcare

Health care in prisons is grossly inadequate and reflects a key power imbalance between correctional staff and 'prisoner'. People in prison are reliant on correctional staff to respond

[11] [2015] VSC 161.

to requests for medical care and attention. The right to healthcare for people in prison is enshrined in s 47 of the Corrections Act and affirmed in *Castles. v Secretary of the Department of Justice*[12]. Despite this, people in prison are often faced with significant barriers to accessing medical care. In practice, correctional security staff are the gatekeepers to medical requests, and we see in practice how the provision of healthcare clashes with the overriding 'security' culture of prison management. Clients have expressed that security staff do not 'trust' their requests and often think they are 'faking it'; requests are not passed on, and if they are, they go unanswered often for days or weeks at a time. Whitney from the Women's Leadership Group describes being without her medication for 11 days and struggled to access any information or assistance from prison staff:

> *"They just kept saying come back tomorrow, come back tomorrow…. at the time, I didn't know I had any rights, I didn't even know I had healthcare rights"*

Both the quality and quantity of care is concerningly poor. Health care in prisons is provided or contracted by Corrections,[13] not a health institution. In our opinion, this prioritises security concerns and 'management' over independent quality medical assessments that are in the best interests of the patient. In our experience, medical staff in prisons are influenced by 'dual loyalty'[14] or conflicting demands from their employer (Corrections Victoria) and the patient. As a result, medical decision making and interactions with patients are influenced by the correctional culture of management, security and cost cutting, leading to limited quality and availability of care. Whitney from the Women's Leadership Group outlined her poor treatment at Dame Phillis Frost Centre:

> *"The doctor himself, he made me cry…I told him the medications I was on but couldn't remember the doses and he just kept raising his voice at me, harping on me, "what doses? what doses?" and I gave him my doctor's contact information and he said, "right, I'll contact your doctor". I found out afterwards from my doctor when I got out, the prison never contacted him."*

Whitney spoke of her experience of accessing a psychiatrist in prison at the recommendation of a nurse. When she met with the prison psychiatrist her concerns were dismissed.

> *"I spent about 5 or 10 minutes with him and he goes, "ok there's nothing wrong with you, off you go" … and I'm like-I'm in here with mental health issues, that was why I committed my crime, I'm trying to get better, and I was just fobbed off"*

The provision of medical/healthcare services in prisons needs to be overhauled as a matter of urgency. Corrections or other 'security' firms/institutions such as GEO Group, should not be contracted to provide health care. We therefore agree in the strongest terms with the Australian Medical Association that health care in prison should be provided by public health authorities.[15] People in prison also should be entitled to Medicare and the Pharmaceutical

[12] [2010] VSC 310
[13] Justice Health, online < https://www.corrections.vic.gov.au/justice-health>
[14] For more see Victoria Law, "*Prisons Make Us Safer": and 20 Other Myths about Incarceration'* (Beacon press, 2021).
[15] Health and the Criminal Justice System', *Australian Medical Association* (Position Statement, 9 August 2012) <https://www.ama.com.au/position-statement/health-and-criminal-justice-system-2012>.

Benefits Scheme ('PBS').[16] People in prison accessing Medicare and the PBS would significantly strengthen links between people in prison and community-based healthcare providers and in turn improve throughcare, which is widely recognised as 'a best practice approach to working with [people in prison] to reduce recidivism, improve health outcomes, and assist community integration'.[17]

Meaningful AOD treatment

The culture of security particularly impacts the medical needs of people who suffer from the health condition of drug dependence. Currently, the system that criminalises drug use—the corrections system—is responsible for treating the very health condition for which it administers punishment. This is an undeniable conflict. Coupled with a culture of stigma, this results in neglect and inadequacies in the provision of treatment, further surveillance of drug users and the removal of treatment as punishment.

In February 2021, Coroner Hawkins published findings about Shae Paszkiewicz's death from drug overdose five days following his release from prison.[18] Evidence before Coroner Hawkins showed that:

- drug treatment programs in prison are inadequate to meet demand and there are restrictions on accessing these programs, particularly for people on remand.[19]
- people who when in the community were engaged with opioid substitution therapy – which is proven to reduce overdose risk and other drug related harms among people who use opioids - experience difficulty and delays in accessing or continuing this treatment in prison, and can have their treatment interrupted or terminated without their consent.[20]

These findings confirmed observations made in a 2015 report by the Victorian Ombudsman, which noted substantial delays and inadequacies in the provision of health care and support to people in prison who experience drug dependence.[21]

These findings are also consistent with the experiences of our clients, many of whom report that they are not able to access the medical treatment in prison they need to manage their drug dependence. Most commonly, our clients report that they are forced to go 'cold turkey' when first taken into custody, which has significant health risks. Where a person is experiencing drug dependence, the unsupervised and immediate withdrawal of the substance that they are dependent on—including alcohol and prescribed substances—poses significant risks to their

[16] Craig Cumming et al. 'In Sickness and in Prison: The Case for Removing the Medicare Exclusion for Australian Prisoners' (2018) 26 *Journal of law and medicine* 140-158.
[17] Health and the Criminal Justice System', *Australian Medical Association* (Position Statement, 9 August 2012) <https://www.ama.com.au/position-statement/health-and-criminal-justice-system-2012>.
[18] Coroners Court of Victoria, *Finding into death without inquest – Shae Harry Paszkiewicz*, 24 February 2021 (COR 2017 6235)
[19] Coroners Court of Victoria, *Finding into death without inquest – Shae Harry Paszkiewicz*, 24 February 2021 (COR 2017 6235) 12.
[20] Coroners Court of Victoria, *Finding into death without inquest – Shae Harry Paszkiewicz*, 24 February 2021 (COR 2017 6235) 13-14.
[21] Victorian Ombudsman, *Investigation into the rehabilitation and reintegration of prisoners in Victoria* (September 2015) 56-60

health and can be fatal.[22] This is particularly true in circumstances where a person reports a history of regular poly-substance use, which many of our clients do. Withdrawal has also been implicated as a possible trigger for suicide, especially when first taken into custody.[23]

People in prison who experience drug dependence should be able to access required and appropriate medical treatment. Opioid Substitution Therapy should be available and accessible, and people in prison should be able to readily access addiction specialists. We note that the Royal Commission into Victoria's Mental Health System highlighted the troubling lack of addiction specialists in Victoria.[24] We agree with recommendations made in that report about increasing the number of addiction specialists working in Victoria. Given the high proportion of people experiencing drug dependence in prison, it is imperative that those specialists are accessible to patients in prison.

Alarmingly, we also have clients who have been removed from pharmacotherapy programs for disciplinary reasons. As outlined in the *Opioid Substitution Therapy Program Guidelines 2015*[25] prisoners who wish to access the program must sign the Program Contract of Consent and Agreement ('Contract'), providing voluntary, informed consent to the 'rules' of the program. The rules proscribe 'use of unprescribed drugs'; 'failing to collect their methadone or buprenorphine at the time specified' and 'failing to treat the correctional health service staff with respect'. Failure to comply with the Contract rules, or even suspicion of a failure to comply, may lead to a person on the Program being rapidly and involuntarily withdrawn from the Program. The process of 'Rapid Involuntary Withdrawal' is outlined in the OSTP Guidelines.

Firstly, Opioid Substitution Therapy ('OST') should not be considered a privilege but recognised as a crucial and life-saving treatment. As such, the removal of medication should never be used as a disciplinary measure to punish or incentivise certain behaviours. Analogously, it would be considered prima facie unethical to remove someone's anti-psychotic medication as a disciplinary response to poor behaviour. Opioid Substitution Therapy should be no different.

Further, the OSTP Guidelines provide that 'prisoners who pose a risk to others may be withdrawn more rapidly'. In our opinion, this uses the threat of 'quicker' withdrawal as a further form of behavioural management and punishment. 'Rapid' withdrawal is harmful. In terms of administration of cessation of OST, the National Guidelines for Medication Assisted Treatment provides for gradual tapering of methadone over months. Immediate or abrupt cessation from OST can result in severe withdrawal symptoms and low severity symptoms over the long term. 'Low severity' symptoms can still have a significant impact on a person's life,

[22] Paul Haber et al. 'Guidelines for the Treatment of Alcohol Problems, prepared for the Commonwealth of Australia' *Department of Health and Aging* (June 2009) <https://www.health.gov.au/sites/default/files/guidelines-for-the-treatment-of-alcohol-problems_0.pdf> .

[23] Sarah Larney et al. 'Opioid Substitution Therapy as a Strategy to Reduce Deaths in Prison: Retrospective Cohort Study' (2014) 4(4) *BMJ Open.*

[24] *Royal Commission into Victoria's Mental Health System* (Final Report, February 2021) Vol. 286.

[25] 'Justice Health, 'Victorian Prison Opioid Substitution Therapy Program Guidelines', *Department of Justice & Regulation* (July 2015) 15-16.

resulting in poor sleep, cravings, issues with mood & associated impact on mental health. [26] Corrections' OSTP Guidelines authorise the withdrawal of 5mg every 3 days, however in our experience this does not occur, with patients reporting being removed from the Program at an unsafe rate. This treatment could amount to a violation of their right to protection from torture and cruel, inhuman or degrading treatment.[27]

Moreover, involuntary withdrawal from the medically supervised substitution program may unnecessarily force dependent people to source opioids by other means. This has dangerous consequences, including the risk of precuring unsafe drugs, the sharing of needles, risk of overdose, blood born viruses, ulcers, and other health risks. It also counterproductively contributes to poor order of the prison by encouraging black market drug trade which may undermine security concerns and lead to further sanction.

Case Study

> *Jack was removed from the methadone program due to disciplinary concerns. On one occasion he did not take his anti-psychotic medication immediately as it made him sleepy and he wanted to watch a movie. He forgot about the medication and guard found it on his person the next day. This was considered a breach of the Program rules and the Contract, triggering 'rapid withdrawal' from the Program. He was removed from the program at an unsafe rate. From early in the withdrawal process, he started feeling sick and was taken to hospital. At the hospital, his dose was increased, however upon return to the prison, it was reduced again. Eventually he was removed from the Program altogether. He was informed by the nurses that he could not be considered for the Program until a 6-month restraining period had passed. In this time, he was engaging in dangerous practices to secure drugs, including sharing needles, risking significant disease, which resulted in disciplinary hearings that cut off his visits. Jack was sick both physically and mentally, reporting daily panic attacks, insomnia, and significant withdrawal symptoms. FLS secured an external medical addiction specialist to assess Jack, and that specialist prescribed him methadone. The prison refused to fulfill the prescription for 'policy reasons', namely disciplinary reasons. Once the 6-month period had passed, he was able to see a doctor again. At this time, the doctor said he could not subscribe methadone due to his anti-depressant medication. Prior to his rule breach, this had not been an issue, and he was on methadone and a higher dose of anti-depressant for 10 years while in prison and was stable. This inability to access methadone did not make sense to Jack, and he was frustrated and upset, and ultimately, unwell.*

In our opinion, the inability and/or unwillingness of the medical provider to administer opioid substitution therapy, despite the significant health ramifications, is a clear example of the doctor's dual loyalty between the patient and Corrections as an employer. It is our opinion that the Corrections policy and rules of the Program overrode the ability of the doctors to make a medical decision. This is not good practice and contravenes ethics of health care: removal of medication should not be a punishment.

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[26] Linda Gowing et al. *National Guidelines for Medication-Assisted Treatment of Opioid Dependence (*April 2014) 89 < https://www.health.gov.au/sites/default/files/national-guidelines-for-medication-assisted-treatment-of-opioid-dependence.pdf>.

[27] *Charter of Human Rights and Responsibilities 2006* (Vic) s 10.

Recommendations

- *Prison healthcare should be provided by public health authorities rather than Corrections Victoria or contracted agencies*
- *Provide care to the same standard as accessible and expected in the community*
- *Remove Deputy Commissioner Instructions 4.13 – OST can be withdrawn involuntarily*
- *Overhaul the Opioid Substitution Therapy Program Guidelines, removing the Rule based Contract as a precursor to engaging in the program*
- *Ensure Opioid Substitution Therapy is easily and readily accessible to those who need it*
- *Enable access to meaningful Alcohol and Other Drug treatment, especially for those entering custody and on remand due to withdrawal risk*

Additionally, the use random urinalysis tests are degrading, and an example of the prioritisation of 'security' over human rights of people in prison. Section 29A of the Corrections Act outlines that if considered 'necessary…in the interests of the management, good order or security of the prison', correctional staff may test for drugs and/or alcohol at any time. [28] In our opinion, this is an overreach of power. In the community, police officers are only permitted to search people without a warrant if there is 'reasonably grounds for suspicion' of drug use. These standards should at a minimum be applied in prison. The procedure is humiliating and degrading and is often accompanied by a strip search. A Supreme Court of Appeal case recently found the 'procedure used to conduct the random urine tests…does limit the dignity right. That is because the procedure is highly intrusive, particularly the requirement that prisoners urinate into a container, in one continuous stream of at least 40 mls of urine, in the presence of two prison officers, and in the full view of at least one of them.'[29] People in prison should not have to be wary of this procedure occurring to them at any time.

People who use or have used drugs are treated differently to others as a matter of policy. The 'Victorian Prison Drug Strategy – Identified Drug Use Program'('Strategy')[30] claims to 'educate users about the risks of drug use and to motivate them to stop using drugs.'[31] The Strategy identifies drug users in different categories of relative seriousness, from alleged traffickers to cannabis users. The program aims to assist people resume contact visits by enabling further opportunities to provide clean urine screens. The level of compliance required to restart contact visits is exceptionally high. Without sufficient medical intervention and supports, 'motivation' of contact visits alone cannot 'will' away the medical condition of drug dependence. In our opinion, the Strategy only serves to increase the surveillance of people who use drugs and administer further punishment. For example, a prisoner with 'Identified Drug User' status cannot meet the 'Standard of Behaviour Criteria' for many activities and privileges, and cannot, say, apply for a personal computer (see Commissioner's Requirements, Prisoner Computers and Gaming Consoles CR 2.1.2, 4.2.1). This is one example of stigma and

[28] *Corrections Act 1986* (Vic) s 29A
[29] *Thompson v Minogue* [2021] VSCA 358 (17 December 2021) [243]
[30] Office of Correctional Services Commissioner 'Victorian Prison Drug Strategy – Identified Drug Use Program' (2002) Accessed 21 January 2022 <https://files.corrections.vic.gov.au/2021-06/vicprisondrugiduprogramfull.pdf>
[31] Ibid 2.

discrimination inherent in Corrections culture and must be addressed through training and policy changes.

Recommendations

- *Overhaul the Identified Drug User program*
- *Amend S 29A of the Corrections Act 1986 so that people in prison cannot be tested for alcohol and/or other drugs at any time.*
    - *We suggest amending in line with legal standards in the community – that testing only occur where there is 'reasonable grounds' for suspicion.*
- *Increase and improve staff training*
    - *training in AOD & dual diagnosis; overdose response training; mental health first aid; cultural awareness training (peer based, community lead)*
    - *Stigma training*

Drug use in prison is a reality. Despite heavy-handed efforts to prevent drug use, such as detection dogs, strip searching and urinalysis, almost 1 in 6 prison dischargees reported using illicit drugs in prison.[32] Due to a suspected risk of disciplinary repercussions, we suspect the number reported in the survey to be lower than reality. Instead of a punitive approach, Corrections should adopt harm reduction practices, such as needle and exchange programs. The 2018 Survey indicated that 1 in 13 people shared injecting equipment while in prison. It is well established and accepted by the Victorian Government that the sharing of needles and syringes risks the transmission of bloodborne viruses.[33] Considering the high levels of bloodborne viruses within the prison population[34] sharing injecting equipment is particularly harmful in these circumstances. Needle and syringe programs have been proven as cost-effective and successful ways at reducing communicable disease. As needle and syringe programs are available in the community, they should also be available in prisons. Victoria should therefore follow the lead of some international jurisdictions and introduce needle and syringe programs to prisons.[35] Needle and syringe programs in prisons is also encouraged by the Australian Medical Association, with a media release to this effect in 2017.[36]

Recommendations

- *Increase the availability of effective, evidence-based programs to treat drug dependence as a medical condition, improve systems inside to align with what is available in the community*
- *Adopt harm reduction practices in prison, such as needle and syringe programs. There are currently no needle and syringe programs in prisons.*
- *Increase number of addiction specialists who can provide treatment to people in prison*

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[32] Australian Institute of Health and Welfare, *The Health of Australia's Prisoners* (Cat. No.PHE, 2018), 98.

[33] 'Needle and Syringe Program', *Department of Health (Vic)* (Web Page, 11 November 2021) <https://www.health.vic.gov.au/aod-treatment-services/needle-and-syringe-program>.

[34] In a 2016 survey, 22% of people in prison tested positive to HepC, and 16% positive to HepB. Butler et al, National prison entrants' bloodborne virus and risk behaviour survey 2004, 2007, 2010, 2013 and 2016. 2017 (Sydney: Kirby Institute, UNSW Sydney)

[35] Lazarus et al, 'Health Outcomes for Clients of Needle and Syringe Programs in Prisons' (2018) 1:40(1) *Epidemiological Review* 96-104.

[36] 'Needle and Syringe Programs Needed in Prisons', *Australian Medical Association* (Web Page) <https://www.ama.com.au/media/needle-and-syringe-programs-needed-prisons>

Closed nature of prisons

In our experience, the closed nature of prisons encourages not only a persistence of degrading treatment, but also an opaque culture characterised by ambiguity, unfairness, and illogical bureaucracy. People in prison are often in the dark about processes and their rights. Those who can self-advocate and make request and/or complaints, often do not receive a response or experience extensive wait times. The lack of knowledge and transparency of the bureaucratic systems that control their lives is a significant cause of distress. One example of this is when Corrections introduced a policy of Emergency Management Days for COVID-19 related disruptions. To our knowledge, there is no clear policy articulating how emergency management days are calculated, and people are distressed over the perceived unfair and arbitrary way their applications are determined.

Another common example of this issue is in decisions related to parole. People express frustration and hopelessness over not knowing outcomes from the parole board applications. People have similar experiences with other applications, such as access to doctors, medication and personal computer access. Corrections should strive to provide clear information, make decisions fairly, and ensure that requests and applications are responded to in a timely manner.

The prioritisation of 'security, good order and management' is also demonstrated in the routine over-use of prison disciplinary proceedings. These proceedings often occur for minor offences, and without an impartial arbiter, nor access to lawyers or legal advice, and without the opportunity for the person to present their case or call witnesses. These challenges are compounded for people with intellectual and cognitive disabilities who find it difficult to navigate the system and understand the processes. Outcomes can have a drastic impact on people's lives, including unpayable and constricting fines, loss of contact visits and removal of other privileges such as computer access. Disciplinary hearings need to be treated with an appropriate level of procedural fairness, oversight and opportunities for review. Legal advice and information should also be readily available. Ultimately, Corrections culture would benefit from a shift away from disciplinary hearings as a way of managing incidents, to a less punitive approach that addresses the underlying cause of behaviour.

Case Study

> *Adam was taken into solitary due to a computer-based prison offence. Adam has a significant intellectual disability. He was unable to understand the disciplinary hearing. They did not call him to provide his side of the story, nor was he allowed a friend to provide their evidence. The matter proceeded and was finalised in the absence of Adam while he was in solitary. He was found guilty of an offence and his computer privileges were revoked. He feels frustrated and that he suffered from a miscarriage of justice due to his inability to state his case or call witnesses.*

People in prison have very limited avenues to legal assistance. Fitzroy Legal Service's Prison Advocacy Program (the 'Program') is one of the only services in Victoria dedicated to prison conditions and the treatment of people in prison. The Program includes a phone line providing information and advice to people in prison, which runs 10am-4pm on Fridays. People in prison can also contact the Program via letter. We receive an enormous number of enquiries and know that we cannot and do not reach most people who need our assistance. Firstly, the prisoner must

have the number on their approved contact list. This requires knowledge of the number, and an application to include the number of their list. This has the potential to exclude legal services and advocacy to people without this knowledge – usually those who are more vulnerable, less able to self-advocate and on shorter sentences. Secondly, the Program only has funding for one part-time lawyer, which is grossly inadequate considering demand. There needs to be sustained investment in community-based, non-government services, including community legal centres and Aboriginal controlled organisations, to conduct advocacy on behalf of people in prison and meet their legal needs.

There also needs to be independent oversight of prisons conditions in Victoria. As stated in previous FLS submissions, this could be achieved through implementing the Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). OPCAT aims to 'establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment'.[37] The Australian Government ratified OPCAT in 2017 and committed to implementing its obligations by January 2022. In June 2020, the Australian Human Rights Commission stated that some progress towards implementing OPCAT had been made, but that 'progress towards implementation of OPCAT to date has been too slow' and 'many critical questions…are only partially resolved'.[38]

Recommendations

- *Increase investment in a sustainable and wholistic manner to community-based, non-government services, including community legal centres and Aboriginal controlled organisations.*
- *Ensure the implementation of OPCAT*
- *Improve systems of responding to requests and complaints to ensure people are informed of their progress at the earliest possibility*

Conclusions

The above recommendations are examples of tangible changes that can be made by Corrections Victoria to significantly improve culture and safeguard against abuses of power. They should be made as soon as possible and be considered the minimal safeguards against overreach. We understand that prisons do not exist in a political vacuum and tough on crime culture has been the staple of Victorian and Federal politics for several years now. As outlined in the The Age article 'Cuff Love: 'the politics and power of Victoria's law and order addiction', both major Victorian political parties are locked in a 'law-and-order arms race' (Fiona Patten). [39] We reiterate statements in the article, urging the Victorian Government not to respond to 'media scare campaigns' that result in expensive and

[37] *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (adopted 18 December 2002, entered into force 22 June 2006) 2375 UNTS 237, art 1.
[38] 'Implementing OPCAT in Australia (2020)*', Australian Human Rights Commission*, (Web Page) <https://humanrights.gov.au/our-work/rights-and-freedoms/publications/implementing-opcat-australia-2020>
[39] Royce Millar and Chris Vedelago 'Cuff Love: the politics and power of Victoria's law and order addiction', *The Age (*online at 28 January 2022).

ineffective penal policies. [40] A wider cultural shift is needed to compliment and reinforce a change of corrections culture. In our opinion, this can occur through focusing on developing communities, and improving how as a state and a nation we support, rather than punish, our most vulnerable. For example, advocates for prison rights often point to the Norwegian prison model as the gold standard. In Norway, prisoners are treated as our 'future neighbours', rather than criminals to be punished.[41] While the Norwegian system *is* an improvement in many ways to other western approaches, and people in Norwegian prisons are treated with human rights and dignity, the discussion often forgets the context in which Norwegian prisons are situated.[42] Norway is a robust welfare state, with social, economic and cultural practices of wealth distribution and strong public service provision, such as education and healthcare. We call for the of strengthening of social goods to improve the lives of our most vulnerable, and in turn, sustainably improve the safety of our communities. We must work towards building a culture of care that prioritises human rights and empowers people, instead of being reactionary, punitive and incubating hopelessness.

[40] Royce Millar and Chris Vedelago 'Cuff Love: the politics and power of Victoria's law and order addiction', *The Age (*online at 28 January 2022).
[41] 'How Norway Turns Criminals into Good Neighbours', BBC News (online at 28 January 2022) <https://www.bbc.com/news/stories-48885846>
[42] Victoria Law, "*Prisons Make Us Safer": and 20 Other Myths about Incarceration'* (Beacon press, 2021).